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6 Attorneys for Defendant and Counterclaim Plaintiff
7 KEATING DENTAL ARTS, INC.

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 SOUTHERN DIVISION

12) JAMES R. GLIDEWELL DENTAL CERAMICS, INC., DBA
13) GLIDEWELL LABORATORIES,
14) a California corporation,

15) Plaintiff,

16) vs.
17) KEATING DENTAL ARTS, INC.,
18) a California corporation,
19) Defendants.

Civil Action No.
SA-CV-11-01309-DOC(ANx)

**DEFENDANT/
COUNTERCLAIM PLAINTIFF'S
RESPONSE TO PLAINTIFF/
COUNTERCLAIM
DEFENDANT'S FIRST SET OF
INTERROGATORIES NOS. 1-25**

KEATING DENTAL ARTS, INC.
a California corporation,

Counterclaim-Plaintiff,

vs.

JAMES R. GLIDEWELL DENTAL CERAMICS, INC., DBA
GLIDEWELL LABORATORIES,
a California corporation, and
DOES 1 THROUGH 5, inclusive,

Counterclaim-Defendants.

1 PROPOUNDING PARTY: GLIDEWELL DENTAL CERAMICS, INC
2 RESPONDING PARTY: KEATING DENTAL ARTS, INC
3 SET NUMBER: ONE
4 TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF
5 RECORD:

6 Pursuant to Federal Rules of Civil Procedure, Rule 33, Defendant,
7 KEATING DENTAL ARTS, INC. (Defendant) hereby responds to the above
8 referenced Interrogatories as follows:

9

10 **GENERAL OBJECTIONS AND REMARKS**

11 The following apply to these responses, and **all responses below are subject to**
12 **these objections and remarks:**

13 1. Discovery and investigation are continuing, and Defendant reserves
14 the right to supplement this response at a later time.

15 2. Defendant and its attorneys have not completed their discovery or
16 preparation for trial, nor have they concluded their analysis of information
17 gathered to date. Consequently, Defendant's responses and objections to this
18 discovery request are based upon information which is presently available to it and
19 its attorneys. Defendant makes these responses and objections to this discovery
20 request without prejudice to its rights to (a) identify and produce evidence of any
21 and all subsequently discovered facts, (b) to modify these responses at a later date
22 that is consistent with the Federal Rules of Civil Procedure, the local rules of this
23 district, and any Scheduling Order entered by this Court, and (c) raise additional
24 objections as Defendant may become aware of same and as may be permitted by
25 relevant law and rules.

26 3. Defendant objects to these interrogatories, and to each and every
27 interrogatory, to the extent that it calls for the production/disclosure of

1 confidential documents/information involving trade secrets or other proprietary or
2 confidential information.

3 4. Defendant objects to these interrogatories, and to each and every
interrogatory, to the extent that it is not reasonably limited in scope or in time.

5 6. Defendant objects to these interrogatories, and to each and every
interrogatory, to the extent that it is not reasonably particular from the standpoint
7 of the responding party, and/or not bearing a sufficient relationship to the manner
8 in which records are kept, thereby requiring responding party to determine, at the
9 risk of sanctions, which of its records fit a demand that requests everything fitting
10 a specific topic or broad description.

11 7. Defendant objects to these interrogatories, and to each and every
interrogatory, to the extent that the request is oppressive and burdensome because
12 it is vague, ambiguous, and/or unintelligible so as to make a response impossible
13 without speculation as to the meaning of the interrogatory.

14 8. Defendant objects to these interrogatories, and to each and every
interrogatory, to the extent that it is unduly broad, unduly burdensome, and
15 oppressive insofar as it calls for "all" and/or "each" and/or "every" possible matter
16 and/or related piece of evidence or information, when a more limited request is all
17 that might be relevant to the subject matter of the within litigation.

18 9. Defendant objects to these interrogatories, and to each and every
interrogatory, to the extent that they are unduly burdensome in view of (a) their
19 likely benefit, (b) the needs of the case, (c) the amount in controversy, (d) the
20 parties' resources, and/or (e) the importance of the issues at stake.

21 10. Defendant objects to these interrogatories, and to each and every
interrogatory, to the extent that it violates the attorney-client and attorney work
22 product privileges (and/or any other relevant privilege) and therefore is protected
23 from disclosure.

1 10. Defendant objects to these interrogatories, and to each and every
2 interrogatory, to the extent that collectively they exceed the discovery limits that
3 may be applicable under relevant law and/or rule.

4 11. Defendant objects to these interrogatories, and to each and every
5 interrogatory, to the extent that they request information that is irrelevant and/or is
6 not reasonably calculated to lead to the discovery of admissible evidence.

7 12. Defendant objects to these interrogatories, and to each and every
8 interrogatory, to the extent that they seek information that is unreasonably
9 cumulative or duplicative or obtainable from some other source that is more
10 convenient, less burdensome, or less expensive.

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2 **RESPONSES TO PLAINTIFF'S INTERROGATORIES, SET ONE**

3

4 **INTERROGATORY NO. 1**

5 Please provide contact information including name, title, last known address
 6 and telephone number ("CONTACT INFORMATION") for all persons, who the
 7 DEFENDANT believes to be knowledgeable of any fact(s) relevant to this Action,
 8 including, without limitation, all former employees, current employees, officers,
 9 directors, agents, attorneys, licensees, licensors, shareholders, customers,
 10 consultants ("PERSONS") of the DEFENDANT, including its predecessors,
 11 successors, or entities which are or have been under common ownership or control
 12 in any manner with the DEFENDANT, entities that have granted or assigned
 13 rights to the DEFENDANT for the designation KDZ BRUXER, and third parties.

14 **RESPONSE:**

15 The contact information relevant to the persons listed below, and applicable
 16 to this response and all following responses in which one or more of these persons
 17 is listed, is as follows:

19 Address	KEATING DENTAL ARTS, INC. 16881 Hale Ave. Irvine, CA, 92606
22 Phone	(949) 955-2100

23 Shaun Keating, President and CEO

24 Diane Mallos, CFO

25 Patrick Ramsey, Director of Operations

26 Jim McEachern, Laboratory Manager

27 Bob Brandon, General Manager

1 INTERROGATORY NO. 2

2 Please provide CONTACT INFORMATION for the PERSONS most
3 knowledgeable about the goods of the DEFENDANT recited in U.S. Application
4 Serial No. 85/287,029.

5 RESPONSE:

6 Shaun Keating

8 INTERROGATORY NO. 3

9 Please provide CONTACT INFORMATION for the PERSONS most
10 knowledgeable about the controls, if any, which are placed over the quality of
11 goods that have been offered for sale by the DEFENDANT under the designation
12 KDZ BRUXER.

13 RESPONSE:

14 Bob Brandon, Jim McEachern, Linda Morgan

16 INTERROGATORY NO. 4

17 Please provide CONTACT INFORMATION for the PERSONS most
18 knowledgeable about the DEFENDANT'S advertising and promotional activities
19 under the designation KDZ BRUXER.

20 RESPONSE:

21 Shaun Keating, Pete Murphy

23 INTERROGATORY NO. 5

24 Please provide CONTACT INFORMATION for the PERSONS most
25 knowledgeable about the intentions of the DEFENDANT for use of the
26 designation KDZ BRUXER.

27 RESPONSE:

28 Shaun Keating

DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST SET OF INTERROGATORIES NOS. 1-25

1
2 INTERROGATORY NO. 6

3 Please identify all products and services that have ever been offered for sale
4 by the DEFENDANT under the designation KDZ BRUXER.

5 RESPONSE:

6 Full contour zirconia-based restorations.
7

8 INTERROGATORY NO. 7

9 Please describe in detail the first instance when the DEFENDANT became
10 aware of the use of the designation BRUXZIR by PLAINTIFF.

11 RESPONSE:

12 After a reasonable effort and review of information reasonably available to
13 Defendant, Defendant is not certain as to as to when the “first instance” occurred,
14 nor the requested “detail” regarding the exact instance or date.
15

16 INTERROGATORY NO. 8

17 Please identify all uses ever made by any party of the designation BRUXER
18 known to the DEFENDANT.

19 RESPONSE:

- 20 a) all of the examples of uses that are listed in the materials Defendant filed in
21 connection with its recent Motion for Partial Summary Judgment, including
22 uses by Plaintiff
- 23 b) doctors use “bruxer” in telephone conversations
- 24 c) doctors write the word “bruxer” on prescriptions
- 25 d) dental marketing materials and dental office pamphlets (particularly
26 pamphlets on TMJ and occlusal wear) use the term “bruxer”
- 27 e) dental textbooks use “bruxer”
- 28 f) dental journals use “bruxer”

- 1 g) use in the public domain (written and spoken language)
2 h) companies and products and businesses that use “bruxer” can be located on
3 the Internet, for example, by searching “bruxer” in a search engine. That
4 search on Google returned about 36,000 results, including those shown
5 here:
6
-
- 7

8 About 36,000 results (0.11 seconds)

9 Search Results

10 **World Wide Words: Bruxer**

11 www.worldwidewords.org/weirdwords/ww-bru1.htm

12 Jun 26, 1999 – A bruxer habitually and involuntarily grinds their teeth. You may
13 be one of these, since it's been estimated that about one in four people do so.

14 **Bruxism - Wikipedia, the free encyclopedia**

15 en.wikipedia.org/wiki/Bruxism

16 Most (but not all) bruxism includes clenching force provided by masseter and
17 temporalis muscle groups, but some bruxers clench and grind front teeth only, ...
Causes - Signs - Symptoms - Sequelae

18 **Are you a Bruxer? | Philadelphia Independent Media Center**

19 www.phillyimc.org/en/are-you-bruxer

20 Sep 21, 2009 – Research papers from recent studies on Bruxism have shown that
the number of people who are unaware that they are bruxers are steadily ...

21 **Transparent Zirconia-Bruxer Esthetic**

22 dentallabnetwork.com/.../transparent-zirconia-bruxer-esthetic-6958/

23 Feb 15, 2011 – Transparent Zirconia-Bruxer Esthetic. I know, I know...you guys
will mix up your own formula using a Crystal zirconia block and some old emax ...
24 Emax press for Patient who is a Bruxer - Oct 7, 2011
Finishing Zir. Bruxer crs - Sep 1, 2011

25 More results from dentallabnetwork.com »

1
2 INTERROGATORY NO. 9

3 Please provide CONTACT INFORMATION for the providers, including
4 agents, of all goods ever offered for sale by the DEFENDANT under the
5 designation KDZ BRUXER.

6 RESPONSE:

7 In addition to the General Objections set forth above, Defendant objects to
8 this interrogatory to the extent that it is vague and ambiguous as to the meaning of
9 “providers, including agents.” Without waiving that or any other objection,
10 Defendant responds as follows:

11 Keating Dental Arts is the sole provider.
12

13 INTERROGATORY NO.10

14 Please provide CONTACT INFORMATION for all third parties with whom
15 the DEFENDANT has entered into an arrangement to advertise and promote
16 products and services under the designation KDZ BRUXER.

17 RESPONSE:

18 Please see Exhibit 10 served herewith in a separate document, which
19 Defendant has designated as “Attorney’s Eyes Only” pursuant to the
20 Confidentiality Order entered in this lawsuit.
21

22 INTERROGATORY NO. 11

23 Please provide CONTACT INFORMATION for all third party uses known
24 to the DEFENDANT of any name believed by the DEFENDANT to be
25 confusingly similar to KDZ BRUXER.

26 RESPONSE:

27 In addition to the General Objections set forth above, Defendant objects to
28 this interrogatory to the extent that it calls for a legal conclusion (as to
DEFENDANT/ COUNTERCLAIM PLAINTIFF’S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT’S FIRST SET OF INTERROGATORIES NOS. 1-25

1 “confusingly similar”). Without waiving that or any other objection, Defendant
2 responds as follows:

3 As presently advised, Defendant is not aware of any such third party uses.
4

5 INTERROGATORY NO. 12

6 Please describe in detail the circumstances of any instance known by the
7 DEFENDANT of actual confusion arising in connection with the use of the
8 designation KDZ BRUXER.

9 RESPONSE:

10 As presently advised, Defendant is not aware of any such instances.
11

12 INTERROGATORY NO. 13

13 Please describe all proposed future uses of the designation KDZ BRUXER
14 by the DEFENDANT.

15 RESPONSE:

16 KDZ Bruxer is a single product within Defendant’s KDZ family of
17 products. Defendant uses that trademark for full contour zirconia indicated for
18 bruxer patients. Presently, Defendant has no future uses planned, beyond
19 continuing that present use.

20
21 INTERROGATORY NO. 14

22 On an annual basis, since the date of the alleged first use of the designation
23 KDZ BRUXER by the DEFENDANT, please state the dollar volume of all sales
24 by the DEFENDANT under the designation KDZ BRUXER.

25 RESPONSE:

26 Please see Exhibit 14 served herewith in a separate document, which
27 Defendant has designated as “Attorney’s Eyes Only” pursuant to the
28 Confidentiality Order entered in this lawsuit.

1
2 INTERROGATORY NO. 15

3 On an annual basis, since the date of the alleged first use of the designation
4 KDZ BRUXER by the DEFENDANT, please state the dollar volume of all
5 expenditures by the DEFENDANT to advertise and promote its goods under the
6 designation KDZ BRUXER.

7 RESPONSE:

8 Please see Exhibit 15 served herewith in a separate document, which
9 Defendant has designated as "Attorney's Eyes Only" pursuant to the
10 Confidentiality Order entered in this lawsuit.

11
12 INTERROGATORY NO. 16

13 Please provide CONTACT INFORMATION for the PERSONS most
14 knowledgeable about the DEFENDANT'S selection and adoption of the
15 designation KDZ BRUXER.

16 RESPONSE:

17 In addition to the General Objections set forth above, Defendant objects to
18 this interrogatory to the extent that it calls for information that is attorney-client
19 and/or work product privileged. Without waiving that or any other objection,
20 Defendant responds as follows:

21 Shaun Keating, in consultation with Defendant's attorney Thomas Gourde.
22

23
24 INTERROGATORY NO. 17

25 Please provide CONTACT INFORMATION for the PERSONS most
26 knowledgeable about the information contained in the records of the
27 DEFENDANT of sales under the designation KDZ BRUXER.

28 RESPONSE:

Shaun Keating, Diane Mallos

1
2 INTERROGATORY NO. 18

3 Please provide CONTACT INFORMATION for the PERSONS most
4 knowledgeable about the records of the DEFENDANT of expenditures to
5 advertise and promote under the designation KDZ BRUXER.

6 RESPONSE:

7 Shaun Keating, Diane Mallos

8
9 INTERROGATORY NO. 19

10 Please identify all investigations that have been conducted, including
11 without limitations, marketing studies, focus group studies, polls, surveys, etc.,
12 which relate to any and all facts involved in DEFENDANT'S adoption of the
13 designation KDZ BRUXER

14 RESPONSE:

15 In addition to the General Objections set forth above, Defendant objects to
16 this interrogatory to the extent that it calls for information that is attorney-client
17 and/or work product privileged. Without waiving that or any other objection,
18 Defendant responds as follows:

- 19 (a) informal trademark search for "KDZ" and "bruxer"
20 (b) opinion of other attorneys, including other trademark attorneys
21 (c) informal survey of current Keating clients in March/April 2011 (mainly those
22 asking for "bruxer crowns" from us at that time)
23 (d) extensive review of dental journals advertisements by other dental labs

24
25 INTERROGATORY NO. 20

26 Please describe any and all trademark searches performed by the
27 DEFENDANT prior to its adoption and use of the designation KDZ BRUXER.
28

1 RESPONSE:

2 In addition to the General Objections set forth above, Defendant objects to
3 this interrogatory to the extent that it calls for information that is attorney-client
4 and/or work product privileged. Without waiving that or any other objection,
5 Defendant responds as follows:

6 (a) Bruxer

7 (b) KDZ

8

9 INTERROGATORY NO. 21

10 Please describe the manner in which the designation KDZ BRUXER is used
11 on or in connection with the GOODS sold by the DEFENDANT.

12 RESPONSE:

13 Defendant uses the designation KDZ Bruxer on or in connection with the
14 GOODS in the following manners: on Defendant's website, on promotional
15 materials relating to the GOODS, on order forms provided to Defendant's
16 customers, and on invoices shipped with the KDZ Bruxer products.

17

18 INTERROGATORY NO. 22

19 Please describe any and all prior relationships that existed between any
20 officers of DEFENDANT Keating and PLAINTIFF Glidewell.

21 RESPONSE:

22 Shaun Keating was employed by Glidewell Dental Ceramics from 1984 to
23 2002.

24

25 INTERROGATORY NO. 23

26 Please describe any and all relationships that have existed between any
27 employees of DEFENDANT Keating and PLAINTIFF Glidewell.

1 RESPONSE:

2 In addition to the general objections set forth above, Defendant specifically
3 objects to this Interrogatory:

- 4 • as not being reasonably calculated to lead to the discovery of admissible
5 evidence
6 • as being vague and ambiguous
7 • as calling for information that may violate rights of privacy of the relevant
8 employees
9 • as requiring Defendant to violate any corresponding duty that Defendant
10 may have to such employees
11 • to the extent that it is unduly burdensome in view of (a) the likely benefit of
12 the information, (b) the needs of the case, (c) the amount in controversy, (d)
13 the parties' resources, and/or (e) the importance of the issues at stake.

14

15 INTERROGATORY NO. 24

16 Please identify all current employees of DEFENDANT Keating who were
17 previously an employee of PLAINTIFF Glidewell.

18 RESPONSE:

19 In addition to the general objections set forth above, Defendant specifically
20 objects to this Interrogatory:

- 21 • as not being reasonably calculated to lead to the discovery of admissible
22 evidence
23 • as calling for information that may violate rights of privacy of the relevant
24 employees
25 • as requiring Defendant to violate any corresponding duty that Defendant
26 may have to such employees

- 1 • to the extent that it is unduly burdensome in view of (a) the likely benefit of
2 the information, (b) the needs of the case, (c) the amount in controversy, (d)
3 the parties' resources, and/or (e) the importance of the issues at stake.

4

5 INTERROGATORY NO. 25

6 Please identify all current distributors of the GOODS of DEFENDANT
7 Keating.

8 RESPONSE:

9 In addition to the General Objections set forth above, Defendant objects to
10 this interrogatory to the extent that it is vague and ambiguous as to the meaning of
11 “distributors.” Without waiving that or any other objection, Defendant responds
12 as follows:

13 Keating Dental Arts is the sole distributor.

14

15

16

17

18 Dated: 2012-04-19

/J. Mark Holland/
J. Mark Holland
J. MARK HOLLAND & ASSOCIATES
Attorney for Defendant and Counterclaim
KEATING DENTAL ARTS, INC., a
California corporation

1

2 VERIFICATION

3

I, the undersigned, say:

4

COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/
5 COUNTERCLAIM DEFENDANT'S FIRST SET OF INTERROGATORIES
6 NOS. 1-25 and know its contents.

7

[CHECK APPLICABLE PARAGRAPH:]

[] I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

[X] I am an agent/officer/partner of the responding party herein, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

[] I am one of the attorneys for the responding party herein. Such party is absent from the aforesaid county where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing documents are true.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed on April 19, 2012, at Irvine, California.

/ Bob Brandon /

Bob Brandon - Declarant

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DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST SET OF INTERROGATORIES NOS. 1-25

16

PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 3 San Joaquin Plaza, Suite 210, Newport Beach, California 92660.

On the date indicated below, I served the following documents (described as DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM DEFENDANT'S FIRST SET OF INTERROGATORIES NOS. 1-25) on all other parties and/or their attorney(s) of record to this action, as listed here:

Attorneys for Plaintiff JAMES R. GLIDEWELL DENTAL CERAMICS, INC., DBA
GLIDEWELL LABORATORIES:

Leonard Tachner, Esq.
17961 Sky Park Circle, Suite 38-E
Irvine, California 92614 Email: tachlaw@aol.com
Telephone: 949-752-8525
Facsimile: 949-955-2415

I accomplished this service as indicated below:

[] (BY MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. By placing a true copy thereof in a sealed envelope, addressed to the person at the address set forth above by postage prepaid United States First Class mail, which envelope shall be deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in Newport Beach, California.

[] (BY OVERNIGHT DELIVERY SERVICE) I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, and I paid or provided for payment of the fees for overnight delivery.

[] (BY FACSIMILE) I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the indicated fax numbers.

[X] (BY EMAIL) I caused such documents to be delivered via email to the offices of the addressee(s) at the indicated email addresses.

[] (BY PERSONAL SERVICE) I caused such document(s) to be delivered by hand to the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 19, 2012, at Newport Beach, California.

/ Kristin Brown /

Kristin Brown

**DEFENDANT/ COUNTERCLAIM PLAINTIFF'S RESPONSE TO PLAINTIFF/ COUNTERCLAIM
DEFENDANT'S FIRST SET OF INTERROGATORIES NOS. 1-25** 17